

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

AUNDRA MILLER, ET AL.,

PLAINTIFFS

v.

CIVIL ACTION NO. 2:04CV238-WAP-SAA

LOWE'S HOME CENTERS, INC., ET AL.,

DEFENDANTS

ORDER

On consideration of the file and records in this action, the court finds that the report and recommendation of the United States Magistrate Judge dated April 20, 2005, was on that date served by first class mail upon the parties; more than ten days have elapsed since service of the report and recommendation; and no objection has been filed or served. The court finds that the report and recommendation should be approved and adopted as the opinion of the court.

It is, therefore,

ORDERED:

(1) That the report and recommendation of the United States Magistrate Judge dated April 20, 2005, is approved and adopted, and the proposed findings of fact and conclusions of law therein set out are adopted as the findings of fact and conclusions of law of the court.

(2) Defendants' motion to dismiss the claims of plaintiff Goodloe is denied.

(3) Goodloe shall pay the reasonable expenses incurred by defendants, including attorneys' fees, because of his failure to attend the deposition. Defendants shall submit an itemization of its reasonable fees and expenses on or before May 31, 2005. Goodloe may file objections to this itemization on or before June 10, 2005. If no objections are filed, the

itemization of fees and expenses will be deemed reasonable, and Goodloe shall tender the amount to defendants' counsel on or before June 10, 2005.

(4) If Goodloe fails to comply with this order, the court will consider a renewed motion to dismiss from the defendants. Goodloe's continued failure to participate actively in the prosecution of his claims may also result in dismissal of his claims pursuant to FED. R. CIV. P. 41(b).

SO ORDERED, this the 19th day of May, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE